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17 ELIZABETH SANTOS

18 UNITED STATES DISTRICT COURT
19 NORTHERN DISTRICT OF CALIFORNIA

20 ELIZABETH SANTOS

21 Plaintiff,

22 vs.

23 PERALTA COMMUNITY COLLEGE DISTRICT;
24 SHIRLEY MACK, an individual and DOES 1-10,
25 inclusive,

26 Defendants.

CASE NO. C 07 5227 EMC

**PARTIES' STIPULATION AND
[PROPOSED] ORDER RE TRIAL
CONTINUANCE**

AND SETTING CMC

Trial Date: December 14, 2009

RECITALS AND STIPULATION

27 Whereas Defendants filed a timely Motion for Summary Judgment in this action on
28 August 19, 2009;

Whereas Plaintiff filed a timely Opposition to Defendants' Motion for Summary
Judgment on September 2, 2009;

Whereas Defendants filed a timely Reply brief in support of their Motion for Summary
Judgment on September 9, 2009;

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1 Whereas counsel for Plaintiff, Kjell Bomark-Noel, was hospitalized at Eden Medical
2 Center from September 11, 2009 through October 7, 2009;

3 Whereas Judge Chen twice continued, at the request of Plaintiff's counsel, the September
4 23, 2009 hearing on Defendants' Summary Judgment Motion as a result of Plaintiff's counsel's
5 hospitalization;

6 Whereas the Court ultimately heard Defendants' Motion for Summary Judgment on
7 October 21, 2009;

8 Whereas the Court requested supplemental briefing from the parties at the hearing on
9 Defendants' Summary Judgment Motion;

10 Whereas the parties timely submitted supplemental briefing on October 23, 2009, with
11 respect to Defendants' Summary Judgment Motion;

12 Whereas the Court has not issued a ruling on Defendants' Summary Judgment Motion to
13 date;

14 Whereas the November 5, 2008 Case Management and Pretrial Order for Jury Trial states
15 that in preparation for the December 14th trial date, the parties must submit, file and/or exchange
16 extensive trial materials by Friday, November 13, 2009, including a Joint Pretrial Statement
17 (setting forth all claims/defenses and disputed factual issues "which remain to be decided"); Trial
18 Briefs; Motions In Limine; Exhibit Lists (including the substance and purpose of each document
19 and sponsoring witness); and pre-marked exhibits;

20 Whereas preparing the required materials by Friday November 13, 2009 is extremely
21 costly, impracticable and will prejudice both parties, in that, the parties cannot currently ascertain
22 the scope of issues to be presented at trial, or what, if any, claims/defenses/issues and/or parties
23 will "remain" in the case following the Court's ruling on Defendants' Summary Judgment
24 Motion;

25 Whereas even if the Court issues a ruling on Defendants' Summary Judgment Motion
26 this week, there will be insufficient time for the parties to prepare the voluminous required trial
27 materials, in a thoughtful and thorough manner, by Friday November 13, 2009;

28 Whereas the parties may still desire an opportunity to participate in a Settlement

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Conference before Magistrate Judge Larson following this Court's ruling on Defendants' Summary Judgment Motion prior to expending significant resources and incurring the expense of trial preparation;

Whereas there is good cause to continue the December 14, 2009 trial date in light of the circumstances, the parties hereby agree and STIPULATE as follows:

The trial scheduled in this matter before Judge Chen for December 14, 2009 shall be immediately vacated. In the event that Defendants' Summary Judgment Motion is not granted in full, the Court shall issue an Order setting a Trial Setting Conference, at which time, the parties will appear before, and confer with, the Court to set a new trial date in this action.

Dated: 11-10-09

GORDON & REES LLP

By

ALYSON CABRERA
Attorneys for Defendants
PERALTA COMMUNITY
COLLEGE DISTRICT and
SHIRLEY MACK

Dated: 11-10-09

LAW OFFICES OF BOMARK-NOEL

By

KJELL BOMARK-NOEL
Attorneys for Plaintiff
ELIZABETH SANTOS

PROPOSED ORDER

Pursuant to the above stipulation, the trial scheduled in this matter before Judge Chen for December 14, 2009, IS HEREBY VACATED. In the event that Defendants' Summary Judgment Motion is not granted in full, the Court shall issue an Order setting a Trial Setting Conference, at which time, the Court will set a new trial date in this action. A CMC is set for 12/23/09 at 2:30 p.m.

IT IS SO ORDERED.

Dated: 11/12/09

Honorable Magistrate Judge Chen

